85-759

No.

Supreme Court, U.S.
FILED
NOV 1 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

STATE OF MARYLAND,

Petitioner,

v.

HAROLD GARRISON,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

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102 pp

QUESTION PRESENTED FOR REVIEW

Does the Fourth Amendment exclusionary rule require suppression of heroin seized from Respondent's separately leased third floor apartment during execution of a valid warrant for Lawrence McWebb's third floor apartment when the police reasonably believed that there was only one third floor apartment, both when applying for the warrant and during its execution?

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No.

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

STATE OF MARYLAND,

Petitioner

v.

HAROLD GARRISON,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

OPINION OF THE COURT BELOW

The reported opinion of the Court of Special Appeals of Maryland in Garrison v. State, 58 Md. App. 417, 473 A.2d 514 (1984), affirming Respondent's conviction is reproduced in the Appendix (pp.1-27).

The reported opinion of the Court of Appeals of Maryland, Garrison v. State, 303 Md. 385, 494 A.2d. 193 (1985), reversing Respondent's conviction is reproduced in the Appendix (pp.28-44).

STATEMENT OF JURISDICTION

The opinion of the Court of Appeals of Maryland reversing Appellant's conviction was filed June 27, 1985. Petitioner, the State of Maryland, filed a Motion for Reconsideration on July 12, 1985, which was denied by the Court of Appeals of Maryland on September 3, 1985. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(3) and Rules of this Court, Rule 17.1(b) and (c).

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment IV:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

STATEMENT OF THE CASE

On May 21, 1982, members of the Baltimore City Police Department executed a search and seizure warrant for the third floor apartment at 2036 Park Avenue in the City of Baltimore, Maryland. Lawrence McWebb was named in the warrant as the occupant of the premises. The warrant described 2036 Park Avenue as a three story brick dwelling.

A pre-trial hearing was held on March 2, 1983, pursuant to motions filed by both McWebb and Respondent, Harold Garrison, to suppress the evidence seized. The warrant, the application, the return and a diagram of the third floor at 2036 Park Avenue were admitted in evidence as State's exhibits.

The affidavit accompanying the application for a search and seizure warrant recited that Lawrence McWebb was known as "Red Cross"; that a reliable informant, instrumental in successful prosecutions in eight search and seizure cases, had purchased marijuana from "Red Cross" at his third floor

apartment within the previous twenty-four hours; that the affiant, Detective Albert Marcus, had checked with the Baltimore Gas & Electric Company and determined the premises at 2036 Park Avenue, 3rd Floor, were in the name of Lawrence McWebb; and that records of the Baltimore City Police Department confirmed that McWebb resided at that address. The description of Lawrence McWebb in police arrest records matched the description provided by the confidential reliable informant who positively identified a picture of McWebb as "Red Cross" from whom he/she had purchased marijuana within the previous twenty-four hours. Further, Det. Marcus averred:

> "No controlled and supervised purchase of Marihuana was requested of the Informant or attempted due to the fact that the apartment is located on the third floor of the premises and it would be impossible to keep the informant under constant observation during the purchase, thus making the purchase tainted. Additionally, no observations of the apartment were conducted due to the fact that it would be impossible to

> tell which apartment the individuals would enter."

The warrant authorized the search of McWebb and of the premises "known as 2036 Park Avenue, third floor apartment." The property authorized to be seized included "marihuana, related paraphernalia, monies, books, papers and photographs pertaining to the illegal distribution of marihuana."

As part of the return portion of the warrant, the executing police officer submitted the following statement:

> "At the time of execution of the attached search & seizure warrant, Lawrence McWebb was stopped outside of the premises and walked up to the third floor. As the key was placed into the lock of the third floor, the door was opened by Harold Garrison, Jr., who was dressed in night clothes. Upon entering the premises it gave the appearance of being one apartment with all doors being open giving free access all the way through the entire third floor. Closer inspection revealed that the third floor was equiped [sic] to accomodate two seperate [sic] apartments with a living room, bedroom, kitchen and bathroom in the front part and the same in the rear

> part. Located in the rear bedroom of Lawrence McWebb was [sic] papers in the name of Harold Garrison. While at the premises, the telephone rang in the front bedroom (Harold Garrison). When answered the subject on the phone asked for 'Red Cross' who was Lawrence McWebb and had a seperate [sic] telephone in his rear bedroom.
>
> Based on the appearance upon entering, and evidence recovered in the bedroom of Lawrence McWebb, it is believed that although the third floor is divided into two seperate [sic] apartments, both McWebb & Garrison had free access to the entire third floor and share a common interest in both apartments."

Det. Marcus testified at the suppression hearing that prior to making his application for the warrant, he looked at the building at 2036 Park Avenue in order to verify information received from the confidential informant, and observed that it was a three story, multi-family dwelling. However, he did not know how many apartments were inside the building.

He checked with the Baltimore Gas and Electric Company and was told that the third floor apartment was listed to Lawrence McWebb. Marcus asked if

there were a front or rear or middle room and "they told me, one third floor was only listed to Lawrence McWebb". Marcus testified that he had no idea that Respondent also lived on the third floor.

Detective Russell Shea testified that on May 21, 1982, he, Marcus, Sergeant Joseph Schanken, and three other Baltimore City police officers executed the search warrant. When they approached the building Shea could tell that it contained apartments but could not tell from the outside how many apartments there were. The front door was locked and there were seven individual mailboxes. Shea put on a construction hat as a ruse and attempted to gain entry to the common door without forcibly knocking it down. Each mailbox had a bell at the bottom, a mail slot above it and a place for a name above the slot. There were no apartment numbers or letters visible on any of the mailboxes; nor was McWebb's name listed. Shea rang all of the bells and knocked on the door, but no one answered.

However, a forced entry was not necessary because Lawrence McWebb drove up to the house in his car, was detained and advised by police of the arrest and search warrants. McWebb unlocked the front door with his key and the six officers entered the first floor hallway. Without stopping, the entire group went up the stairs to the third floor. The detectives did not stop on the other floors to examine their character. It had occurred to Shea that there might have been more than one apartment on each floor, but he could not determine that simply from the number of floors because there was also a basement, which could have contained more than one apartment. When they got to the third floor, there was only one door, so it didn't occur to Shea that there might have been two apartments on the third floor. The locked door at the top of the stairs was opened by McWebb, permitting the police to enter a foyer with rooms to the left and to the right. As they went through the door, the officers immediately noted an open door to the left (later

identified as the living room occupied by Lawrence McWebb) and an open door to the right (later identified as the bedroom occupied by Respondent). Respondent, dressed in nightclothes, was standing to the right side of the foyer.

From five feet away in the hallway, Det. Shea saw loose marijuana on a newspaper located on a dresser inside the doorway to the bedroom (Respondent's) on the right side of the hallway. The officers split up to conduct the search. Shea went to his left and began searching what was later established to be McWebb's bedroom. He recovered a revolver, marijuana, and two electric bills, one addressed to McWebb and the other to Respondent. He testified that he did not notice at that time that one of the utility bills was marked "3F" and the other "3R."

Shea then proceeded across the open foyer through an open doorway to a bedroom on the right side of the third floor entrance. He observed clothing hanging on the door which was opened back to the

interior wall, and found, in the pockets of a jacket, syringes, a cap used for cooking heroin and five bundles of currency totalling $4000. During his search of the right bedroom (Respondent's), Shea answered the phone when it rang. The caller asked for "Red Cross", McWebb's street name.

Shea then noticed that the door had a dead-bolt lock. Sgt. Schanken observed that the door to the left of the hallway had a similar lock. Schanken then ordered the search stopped, and called Assistant State's Attorney John Prevas on Respondent's phone, because it appeared at that point that two apartments were involved. Shea testified that all of the interior doors on the third floor were open when the police entered. The door to the bedroom on the right was not only open, but had clothes hanging over it. Shea did not see any numbers or letters on that door or its frame.

Det. Marcus testified that upon entering the third floor, he observed a quantity of marijuana on a

dresser in a bedroom to his right and immediately proceeded into that area to seize the contraband. He, like Shea, placed Respondent in the foyer. Marcus recovered heroin from several dressers in Respondent's bedroom before he was advised by Sgt. Schanken to discontinue the search. Marcus also testified that the interior doors were all open and that there were clothes hanging on the door to the bedroom on the right. He did not see any numbers identifying separate apartments. Marcus explained that inside the apartment there was a common door which separated the two bathrooms, but it was open so that there was free access throughout the entire third floor. In preparing the inventory for the return, Marcus did not separate the property which had been seized on a room by room basis.

Sgt. Schanken, the officer in charge during the search, testified as a defense witness. He knew there were different apartments in the building because the warrant had been issued for the third floor

apartment. However, he did not know how many apartments there were and he had been unable to find out prior to entering the building. Schanken was the first police officer through the common door on the third floor and he saw Respondent standing right in front of him in the hallway. Respondent never said anything to him, nor informed him that he had a separate apartment. Respondent's door on the right was pushed wide open and clothes were hanging from it. At no time during the search did McWebb or Respondent indicate that there were two separate apartments. It was not until later, as he was walking around, that Schanken began to realize that there were two bathrooms, two kitchens and that there might possibly be two separate apartments. At that point, he ordered the officers to stop their search immediately.

Respondent testified at the hearing that on May 21, 1982, he was living at 2036 Park Avenue, apartment 3F, meaning 3 front. He had lived there by

himself since February 1979. Lawrence McWebb lived in the rear apartment on that floor - apartment 3R. Respondent testified that he obtained his mail from the mailbox which had his name and the number 3F on it. He acknowledged that the diagram of the third floor was basically accurate. He further identified Defense Exhibit 1A as a Baltimore Gas and Electric Company bill in his name. He could give no reason why his bill had been found in McWebb's apartment.

On the day of the search, Respondent was lying on his bed when he heard a commotion in the hall. Contrary to the police officers' testimony, he did not stand in the hallway, but remained in his apartment doorway with a police officer present. He testified that no phone calls were received in his apartment while the police were there and that his apartment had not been buzzed at all that day. Contrary to the testimony of the three police officers, Respondent testified that the apartments are designated "3F" and

"3R" by lettering on the doorjambs, [1] and claimed that the fire door between the two bathrooms had never been opened.

Lawrence McWebb also testified at the hearing. When he drove up, and was accosted by the police officers, he told them he was Lawrence McWebb and that he lived on the third floor, in the rear. McWebb denied having Respondent's electric bill or any other property of Respondent's in his bedroom. He insisted that the fire door between the two bathrooms was kept locked. He further testified that his mailbox had his name on it.

On cross-examination, McWebb admitted his nickname was "Red Cross". He also admitted that he

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[1] At the suppression hearing, Respondent offered photographs of the entrances to both apartments into evidence which tend to support his contention. However, the numerals were painted in the same brown color as the molding around the doorways. It is, of course, possible that the numerals were affixed between the time of the execution of the search warrant on May 21, 1982 and the suppression hearing held almost a year later.

had several prior convictions. He denied that the door to Respondent's bedroom on the right was open or that any of Respondent's clothes were draped over the door at the time of the entry.

McWebb sought suppression of the items seized from his apartment on the ground that the search warrant had not particularly described the premises to be searched. Respondent sought suppression of the items seized from his apartment because the officers did not have a warrant for his apartment, and had no right to go into his apartment because they either knew or should have known that his was a separate apartment.

In his ruling, Judge Basil Thomas, presiding in the Circuit Court for Baltimore City, made the following findings of fact and denied the motion:

> "Yes. Now the Defendant McWebb contends again that it was a general warrant. Now, Defendant argued that argument. That is the police knew or should have known that the Garrison apartment was separate and distinct from the apartment of the Defendant McWebb. He further

characterizes the testimony of police as perjured or unworthy of belief.

Now the Court, based on what it finds to be critical evidence, makes the following findings of facts: One, that on May 21st, 1982, the police executed a search and seizure warrant for premises at 2036 Park Avenue, third floor apartment. Two, the police had reliable information to believe the Defendant McWebb resided in a third floor apartment, did not know of another apartment on the third floor. Now, while it was evidence that there were a number of apartments in the building, police were unaware where these apartments were located or the character of the building.

Three, the Defendant McWebb was detained outside of 2036 Park Avenue. With the keys furnished by him, the police gained entrance through a locked front door to the building, next to the door were seven mail boxes with bells, or indicating were bells under each mailbox, but no names were reflected on any of the mail boxes. Further, McWebb's name was not visible on any of the mail boxes or any area adjacent thereto.

Next, the police were directed to the third floor by McWebb without any notice or knowledge of the layout of that area. Five, that entrance to the third floor was gained through a

common marked door which gave no indication that there was more than one apartment located on said floor. There was no one to alert anyone to indicate that there were more than one apartment.

Next, that upon opening said door, police found the Defendant Garrison standing there in his night clothes. Next, seven, upon entrance to the third floor, police saw an open door to the left, later identified as McWebb's apartment, and also an open door to the right later identified as Garrison's apartment. In fact, no door was visible at the time the police entered and the police were unaware at that time that there were two apartments.

Eight, that from that position of the hallway area leading to the two apartments, the police saw and based on their expertise located on top of the dresser in an open room to the right, a quantity of marijuana. Entrance was made into that room later identified as the apartment of Defendant Garrison where a police or the police found over the front door or the door leading to that area articles of men's clothing.

No numbers were observed by police upon entering the apartment which would alert them to a separate apartment. The room was searched, and in the apartment of Defendant Garrison was recovered a quantity of

heroin and approximately four thousand dollars in cash.

Nine, also significant or significantly at the time, neither Defendant Garrison nor Defendant McWebb indicated that there were two separate apartments on the third floor. Ten, that a copy of the search and seizure warrant was given to the Defendant McWebb. The inventory listed all the evidence seized from both apartments without indicating which pieces of evidence were found in each location. Eleven, it is clear that there was a common door which could be opened at the time of the search affording access between the two apartments.

The evidence indicates that while each apartment or the occupant of each apartment could have privacy by locking this door, nevertheless, there was free access judging from all the evidence at the time the police arrived there betwen the two apartments, and that the Defendants so intended based on the evidence that has been submitted before me.

* * *

Now, with respect to the search and seizure warrant. The general rule regarding the searches of multiple units for the purpose of satisfying the Fourth Amendment, searching two or more apartments in the same building, is no different

> than searching two or more completely separate houses. Probable cause must be shown for searching each house, or as the case may be, each apartment. However, there is an exception to this general rule where the multiple unit character of the premises is not externally apparent and is not known to the officer applying for or executing the warrant.
>
> It is clear that the warrant specified the premises to be searched as the third floor apartment of the Defendant McWebb, that the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until the search had been made and the items were searched [sic]. In view of these findings, the Court will deny the motion of each Defendant to suppress the evidence."

Respondent proceeded to trial on a statement of facts with a plea of not guilty. [2] On March 18, 1983, he was found guilty of possession of heroin with intent to distribute and sentenced to a fifteen year term of imprisonment.

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[2] McWebb pled guilty to possession of marijuana with intent to distribute and did not appeal.

Respondent appealed to the Court of Special Appeals of Maryland, which affirmed the judgment of the trial court. His Petition for a Writ of Certiorari was granted by the Court of Appeals of Maryland. That court reversed Respondent's conviction, explaining that since there was no warrant authorizing police to search Respondent's apartment and since no exceptions to the warrant requirement applied to the facts in the instant case, the police had "no justification for entering his premises, regardless of appearances" (Apx. 40). On July 12, 1985, Petitioner filed a Motion for Reconsideration and Stay of the Mandate which was denied on September 3, 1985 (Apx. 47).

REASONS FOR GRANTING THE WRIT

The Court of Appeals of Maryland has decided an important question of federal law involving the Fourth Amendment and the application of the exclusionary rule that has not yet been, but should be,

settled by this Court. [3] Furthermore, it has decided this federal question in a way that is directly in conflict with applicable decisions of this Court.

Reasonable police conduct, and not perfection, is required by the Fourth Amendment. This Court and others interpret the Constitution to require the police to act with probable cause in searching protected areas and seizing items therefrom. Nevertheless, the Maryland Court of Appeals has held the police to the impossible standard of acting with actual knowledge of the truth with absolute certainty. In requiring a totally perfect performance of law enforcement duties, that court has, with the 20/20 vision of

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[3] Although the Maryland court referred to Article 26 of the Maryland Declaration of Rights, which parallels the Fourth Amendment, the court observed that the federal and state provisions were in pari materia (Apx. 36). Thus, the court's opinion was based on an interpretation of the Fourth Amendment and not on an independent state ground. Michigan v. Long, 463 U.S. 1032, 1040-41, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201, 1214 (1983).

hindsight, placed an intolerable and impossible burden on law enforcement officers.

The State of Maryland is not seeking ratification of police conduct simply because the officers had a good faith belief that they were acting properly. Instead, the State maintains that there was no Fourth Amendment violation, no error of judgment by the police, no error in the warrant and, thus, no need to apply the exclusionary rule. The evidence seized from Respondent's apartment was admissible because the police had a reasonable belief under all the circumstances, both during their investigation leading to the application for the warrant and during their execution of the warrant, that they had identified and were in the apartment for which they had probable cause and as authorized by the search warrant.

In Hill v. California, 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971), this Court upheld the arrest of a man whom the police reasonably, but

mistakenly, believed was the man they sought under a valid arrest warrant. Review by this Court is necessary to determine whether Hill applies by analogy to a search situation; whether the police can search the "wrong" apartment, if they reasonably believe it is the "right" apartment to be searched under a valid warrant.

In contrast, this case does not present an issue on the good faith exception to the exclusionary rule and is readily distinguishable from Massachusetts v. Sheppard, 468 U.S. __, 104 S.Ct. 3424, 82 L.Ed.2d 737 (1984). Here there was no mistake on the face of the warrant in the description of the premises to be searched. Instead, the search warrant was valid on its face. The execution of the warrant was also reasonable, despite the mistaken belief that Respondent's apartment was part of the area described in the warrant as the premises to be searched.

ARGUMENT

A VALID WARRANT TO SEARCH THE THIRD FLOOR APARTMENT OF A BUILDING LATER DISCOVERED TO HAVE TWO THIRD FLOOR APARTMENTS PERMITS A SEARCH OF BOTH APARTMENTS CONDUCTED PRIOR TO THE DISCOVERY THAT THERE WERE SEPARATE APARTMENTS.

One of the specific commands of the Fourth Amendment is that all warrants shall "particularly describ[e] the place to be searched." A search warrant sufficiently describes the place to be searched if "the officer with a search warrant can, with reasonable effort, ascertain and identify the place intended." Steele v. United States, 267 U.S. 498, 503, 45 S.Ct. 414, 416, 69 L.Ed. 757 (1925). Obviously, the primary purpose of this limitation is to minimize the risk that police officers executing search warrants will, by mistake, search a place other than the place intended by the magistrate. [4] A corrollary purpose is to assure

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[4] See People v. Edwards, 35 Ill. App.3d. 807, 342 N.E.2d 800 (Ill. App. 1976).

the presence of probable cause. The lack of a more specific description of the place to be searched may alert the magistrate to question whether the described items are to be found in a particular place. After the fact scrutiny of the particularity requirement requires focus on two separate aspects of the warrant process: the application stage and the execution stage. A Fourth Amendment violation occurs only when a defect is found in the reasonableness of police conduct at one of those two stages.

There are, and will be, instances where the description of the premises to be searched in the warrant is imprecise or faulty. Reviewing courts have generally upheld police actions where, despite the inaccuracy, the police have ultimately arrived at the right place. Even though the police initially may have been confused because of a mistake in the description on the warrant or mistakenly searched another apartment before getting to the one listed in the warrant, suppression has been rare.

Cases involving apartment buildings, where there is multiple occupancy, have provided continually perplexing problems to the police and the courts. It has long been held that police officers, before they constitutionally may search a separate residential unit within an apartment building, must have probable cause specifically related to that unit. United States v. Hinton, 219 F.2d 324, 325-26 (7th Cir. 1955). A single warrant "cannot describe an entire building when cause is shown for searching only one apartment." Moore v. United States, 461 F.2d 1236, 1238 (D.C. Cir. 1972). A general rule has evolved: a search warrant for an apartment building or other multiple occupancy building will be held invalid if it fails to describe the particular subunit to be searched with sufficient definitiveness to preclude a search of one or more subunits indiscriminately. [5] The Fourth Amendment

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[5] See United States v. Higgins, 428 F.2d 232 (7th Cir. 1970) (warrant invalid where apartment building had several separate addresses and otherwise was subdivided into apartments in (Cont'd.)

basis for this rule is that:

> ". . . Apartment dwellers not only have 'a reasonable "expectation of privacy,"' Terry v. Ohio, 392 U.S. 1, 9, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968), quoting Katz v. United States, 389 U.S. 347, 361, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967) (Harlan, J., concurring), within the entire apartment building that runs against persons who do not live in (or have permission to enter) the building; they also have such an expectation within their individual apartments that runs against persons who do not live in (or have permission to enter) their individual apartments, including persons who nonetheless have authority to be in the building as a whole. Consequently, before police officers may frustrate this latter expectation by entering an apartment, they must demonstrate - in most cases before the fact and to a magistrate - that their proposed action is reasonable in light of the existence of probable cause to believe that a crime has been committed and that evidence relevant thereto is located in that apartment. See Aguilar v. Texas, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d

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ways that were externally evident to the police. Compare, Moore v. United States, supra, (warrant that failed to specify one of two apartments on second floor of specified building held valid because the annexed affidavit twice referred to Apt. No. 7).

> 723 (1964); Chapman v. United States, 365 U.S. 610, 81 S.Ct. 776, 5 L.Ed.2d 828 (1961)." United States v. Dorsey, 591 F.2d 922, 928 (D.C. Cir. 1979).

However, the apartment search cases have not ignored the "realities of administration of criminal justice." Moore v. United States, supra, 461 F.2d at 1238. Instead, they require only as much specificity as police officers, with "practical accuracy" may provide. United States v. Santore, 290 F.2d 51, affirmed in relevant part en banc, 290 F.2d 74 (2nd Cir. 1960), cert. denied, 365 U.S. 834, 81 S.Ct. 745, 5 L.Ed.2d 743 (1961). Thus, the "reasonable expectations of privacy" protected by the warrant requirement, in the context of subdivisions of single buildings, "extend as far as, but no further than, the police actually knew or reasonably should have assumed they extended." United States v. Dorsey, supra, 591 F.2d at 929. This view, of course, is consistent with Scott v. United States, 436 U.S. 128, 137, 98 S.Ct. 1717, 1723, 56 L.Ed.2d 168 (1978), where this Court most recently

emphasized that the focus in Fourth Amendment cases is an objective one of the reasonableness of police activity in light of facts known to officers at the moment of the seizure or search.

In United States v. Santore, supra, an important exception to the subunit probable cause rule was recognized: If a building in question from its outward appearance would be taken to be a single-occupancy structure and neither the affiant nor other investigating officers nor the executing officers knew or had reason to know of the structure's actual multiple-occupancy character until execution of the warrant was under way, then the warrant is not defective for failure to specify a subunit within the main building. [6] There, the building appeared to be a one family house and had been so registered with the

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[6] See, Annotation: Search Warrant: Sufficiency of Description of Apartment or Room to be Searched in Multiple-Occupancy Structure, 11 A.L.R.3d 1330 and cases cited therein.

local authorities, but, unknown to the police or other authorities, and in contravention of local ordinances, the occupant had subdivided it. The Court of Appeals for the Second Circuit concluded:

> "In view of these facts, we think that the issued warrant described the premises to be searched with the 'practical accuracy' we have held to be necessary. . . . The description in the warrant was in accordance with the outward appearance of the structure, . . . and in view of the concealment by Orlando of the interior alterations by him, it would be absurd to say that the Government was on notice as to it. The agents were not warned of a possible dual occupancy of the house until after they had shown a copy of the warrant to Orlando and had entered inside. At that moment it was too late for them, consistent with the success of their mission, to have retreated and obtain a new warrant." Id, 290 F.2d at 67.

The soundness of this decision was emphasized by Professor Wayne LaFave, Search and Seizure, (1978) §4.5 at 80, wherein he explained:

> "At first blush, it might appear the Santore rule is unsound. Why, it might be asked, should the innocent occupants of other, separate living

units be subjected to the risk of search merely because of the prior police ignorance as to the multiple-occupancy character of the premises? So the argument might proceed, if, as noted earlier, a facially-sufficient description made in good faith will not be sustained when the police find, upon arrival in the general area described, that there are errors in description making it impossible to determine which building was intended, then surely the same result is called for when they cannot determine which part of a multiple-occupancy dwelling was intended. Three points may be tendered in response. First of all, in the latter situation the police can in no way be faulted for their failure to have a more specific description, for reasonable investigation would not have uncovered the multiple-occupancy character of the structure. Secondly, as emphasized in the last sentence quoted in Santore, the latter situation is unique in that the defect in the warrant description is discovered only after the police have tipped their hand by commencing execution of the warrant. Finally, there is ordinarily no risk to those in separate living units, for upon discovery of the multiple-occupancy character of the premises the police should be expected to draw upon all readily available information (whether or not in the warrant or affidavit) in deciding what part of the described

> premises may reasonably be searched. It is fair to conclude, therefore, that the Santore rule is sound, provided it is narrowly construed so as to apply only when: (i) the multiple-occupancy character of the building was not known and could not have been discovered by reasonable investigation; (ii) the discovery of the multiple occupancy occurred only after the police had proceeded so far that withdrawal would jeopardize the search; and (iii) upon discovery of the multiple occupancy, reasonable efforts were made to determine which subunit is most likely connected with the criminality under investigation and to confine the search accordingly."

The principle in Santore has been followed in Maryland[7] and in many other state and federal jurisdictions[8] to uphold admission of evidence taken from

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[7] Thomas v. State, 50 Md. App. 286, 437 A.2d 678 (1981); Green v. State, 38 Md. App. 63, 379 A.2d 428 (1977); Butler v. State, 19 Md. App. 601, 313 A.2d 554 (1974); Delly v. State, 30 Md. App. 391, 352 A.2d 331 (1976)

[8] United States v. Davis, 557 F.2d 1239 (8th Cir. 1977), cert. denied, 434 U.S. 971, 98 S.Ct. 523, 54 L.Ed.2d 461(1977); Houser v. Geary, 465 F.2d 193 (9th Cir. 1972), cert. denied, 409 U.S. 1113, 93 S.Ct. 927, 34 L.Ed.2d 696 (1973); United States v. Jordan, 349 U.S. 107 (6th Cir. (Cont'd.)

the premises intended to be included in the, in fact, overbroad warrant. The State submits that this rationale applies equally to permit use of evidence discovered during a reasonable search of all premises, even those not originally intended to be covered. Consequently, resolution of the propriety of the seizure of the items taken from Respondent's bedroom requires a two-fold inquiry: whether the police knew or should have known that separate apartments existed on the third floor of 2036 Park Avenue, (1) at the time of their application for the search and seizure warrant, and (2) at the time of the execution of the warrant.

1965); Owens v. Scafati, 273 F.Supp. 428 (D.Mass. 1967), cert. denied, 391 U.S. 969, 88 S.Ct. 2043, 20 L.Ed.2d 883 (1968); Jackson v. State, 129 Ga. App. 901, 201 S.E.2d 816 (1973); People v. Cain, 35 Ill. 2d 184, 220 N.E.2d 195 (1966); State v. Maulding, 29 Or. App. 1, 564 P.2d 729 (1977); State v. Chisholm, 7 Wash. App. 279, 499 P.2d 81 (1972); State v. Jenkins, 275 S.C. 129, 267 S.E.2d 542 (1980).

Reasonable Application for Search Warrant.

Respondent's co-defendant, Lawrence McWebb, argued that the Santore rule should not apply to the search because there had not been a reasonable application for the search warrant. No court, however, has yet explicitly agreed with him.

The police adequately described the premises to be searched and they unquestionably had sufficient probable cause for the search of McWebb's apartment, as recited in the facts, supra, at 3-18. The multi-occupancy character of the third floor was not known at the time of application and could not have been discovered by reasonable investigation. Other decisions have reached similar results under similar facts: see, e.g. United States v. Ramos, 282 F.Supp. 354, 355 (S.D.N.Y. 1968); People v. McGill, 187 Colo. 65, 528 P.2d 386 (1974); People v. Thomas, 70 Ill. App. 3d 459, 26 Ill. Dec. 940, 388 N.E.2d 941 (1979); People v. Franks, 54 Mich. App. 729, 221 N.W.2d 441 (1974); Delly v. State, 30 Md. App. 391, 352 A.2d 331 (1976).

Thus, prong one of the test - the reasonableness of the warrant application - was met.

Reasonable Execution of Search Warrant.

Respondent argued that, once it was shown at the suppression hearing that he had a separate lease, had paid a separate utility bill, and had a separately marked apartment on the third floor, the search of his bedroom was in violation of the Fourth Amendment because it was outside the scope of the warrant for McWebb's apartment. This information, however, was not available to the police prior to discovery and seizure of the heroin and should not have been used by the Court of Appeals of Maryland in finding the search and seizure unreasonable on the ground that the police knew or should have known that Respondent had a separate apartment on the third floor during the execution of the warrant.

The Court of Appeals unfortunately misconstrued the evidence and the trial judge's findings of fact. After citing the trial judge's findings of fact and

underlining the portion of his ruling where he said that it was "clear that the warrant specified the premises to be searched as the third floor apartment of the Defendant McWebb", the Court of Appeals concluded that "despite its denial of the defense motions, the trial court determined that the warrant, on its face, was limited to McWebb's apartment." (Apx. 35). The Court of Appeals has missed the obvious. The trial court was ruling on the suppression motions of both McWebb and Garrison, and the italicized portion clearly referred to McWebb's argument that the warrant was not sufficient to describe the premises to be searched as it affected his apartment. The Court of Appeals ignores the fact that the trial court went on to say with regard to Respondent's suppression motion:

> ". . . that the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until after the search had been made and the items were searched [sic]." (Apx. 35).

Clearly, the trial judge found that the police neither knew nor should have known at the time of the execution of the warrant that there was more than one apartment on the third floor. In other words, Judge Thomas found that the police reasonably believed they were in McWebb's apartment when they searched the bedroom, which later turned out to be, in fact, the bedroom of Respondent and discovered heroin therein. The trial judge believed that nothing alerted the police of the actual existence of two apartments until after the search had been made and the drugs were seized. The record supports the trial court's finding that the police search of what turned out to be two separate apartments was proper under the authority of the warrant to search McWebb's third floor apartment.

The issue before the Court of Appeals should not have been limited to whether Respondent actually maintained a separate residence on the third floor, a fact conceded by the State. Rather, the issue was

whether the police officers' conduct was reasonable in the totality of the circumstances as they were at the time of the execution of the warrant. This Court has emphasized that one of the purposes of the search warrant requirement is to prevent hindsight from coloring judicial evaluation of the reasonableness of a search or seizure. See United States v. Martinez-Fuerte, 428 U.S. 543, 565, 96 S.Ct. 3074, 3086, 49 L.Ed.2d 116 (1976). Moreover, that judicial evaluation of the reasonableness must be based in light of the facts known to the police. Scott v. United States, supra. The Court of Appeals erred, therefore, in holding that the police had improperly "expanded" the scope of the search warrant for McWebb's apartment by searching Respondent's apartment.

Petitioner maintains that the search of Respondent's apartment, which was based on factual assumptions by the police, which were later found to be erroneous, may nevertheless be valid if there is an adequate factual basis in the record to determine the

reasonableness of the officer's conduct in making the search. In Hill v. California, 401 U.S. 797, 91 S.Ct. 1106, 28 L.Ed.2d 484 (1971), this Court held that the arrest of a person who was mistakenly thought to be the person named in an arrest warrant was nevertheless valid so long as the arresting officer: (a) had probable cause to arrest the person sought, and (b) reasonably believed the person arrested was the person sought. This Court emphasized:

> "The upshot was that the officers in good faith believed Miller was Hill and arrested him. They were quite wrong as it turned out, and subjective good faith belief would not in itself justify either the arrest or the subsequent search. But sufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment and on the record before us the officers' mistake was understandable and the arrest a reasonable response to the situation facing them at the time." 401 U.S. at 803-804, 91 S.Ct. at 1110-1111, 28 L.Ed.2d at 489-490.

Accord United States v. McEachern, 675 F.2d 618, 621 (4th Cir. 1982); United States v. Glover, 725 F.2d 120,

122 (D.C. Cir. 1984); United States v. O'Connor, 658 F.2d 688, 691 (9th Cir. 1981).

Other courts have upheld police searches of the "wrong" apartment. See, e.g., State v. Hymer, 400 So.2d 637 (La. 1981) (search of defendant's locked room proper under warrant for entire house even where probable cause based on actions of someone other than defendant); People v. Kinnebrew, 75 Mich. App. 81, 254 N.W.2d 662, 664-667 (Mich. App. 1977) (search of defendant's first floor apartment under warrant for entire house reasonable where police not aware of multiple occupancy prior to search even though probable cause went to second floor apartment); State v. Hendricks, 145 N.J. Super. 27, 366 A.2d 999, 1000-1002 (1976) (search of entire first floor pursuant to warrant valid when subdivisions not apparent prior to search); State v. Woodard, 35 N.C. App. 605, 242 S.E.2d 201 (1978) (seizures from defendant's room upheld under warrant for entire

premises where owner, although present, failed to tell officers of separate rented bedroom).

As illustrated by the foregoing cases, the Fourth Amendment only protects persons against unreasonable searches, not imperfect ones. Under the reasoning of Hill, supra, this search of the "wrong" apartment was proper. The police officers had sufficient information from the informant, the utility company, and their own observations to believe that they were in McWebb's apartment, searching it pursuant to the warrant. Indeed, McWebb had led the officers to his apartment and opened the door with his key. That they mistakenly believed that they were in McWebb's bedroom was understandable and their search of the bedroom, later determined to be Respondent's, and seizure of heroin from it, was a reasonable response to the situation facing them at that time.

The trial judge held that everything the police knew led them to believe that they were in McWebb's

apartment at the time they were seizing narcotics. He found as fact that nothing alerted them that there were two separate apartments until after the heroin had been seized from Respondent's bedroom. He emphasized that the third floor was being commonly used by both McWebb and Respondent.

On the day of the execution of the warrant, the officers ascertained that there were seven mail boxes. However, that did not mean that there were seven apartments in the building. Because there were four separate floors in the building, including a basement, they had no way of knowing how the building had been subdivided. When McWebb suddenly appeared, the circumstances became exigent, and they had no choice but to accompany him directly to the third floor. When they entered the third floor from the stairway, with the help of McWebb and using his key, everything indicated that there was only one apartment on the floor. They saw a living room on the left and a bedroom on the right. They were looking for

marijuana and immediately saw it on top of a dresser in the bedroom to the right. Respondent was present in his nightclothes, leading to the conclusion that he was either McWebb's houseguest or roommate. An electric bill belonging to Respondent was found in McWebb's bedroom and McWebb reeeived a phone call, asking for him by his street name, on the phone in Respondent's bedroom. Neither McWebb nor Respondent told police they had separate apartments. The police officers said they did not see the numerals painted on the door frames. [9] It was only as the police were concluding their search and saw that there were two kitchens and an unlocked common door between two bathrooms that they realized that there could in fact possibly be two separate residences. At that point, the officer in charge stopped the search and

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[9] The police needed to fan out quickly in both directions on the third floor to make certain that no other persons were present who could pose a danger to them or who could be disposing of the drugs they were looking for.

immediately called an Assistant State's Attorney for advice. The search was not resumed. Clearly, therefore, the record supports the trial court's finding that the warrant was sufficiently particular to justify the search of the entire third floor and that the execution of the warrant was reasonably conducted.

The law enforcement community needs this Court to consider this case. Police officers routinely execute search and seizure warrants in multiple occupancy buildings and will undoubtedly make mistakes. They need a standard to determine which conduct is mistaken but reasonable, and which is unreasonable and a violation of the Fourth Amendment. The exclusionary rule should be restricted to cases of Fourth Amendment violations where it can have a deterent impact on police practices. To allow the Maryland Court of Appeals' decision to stand, condemning reasonable police actions under a valid warrant without explaining why they were unconstitutional, would be to condone an

intolerable miscarriage of justice that needs to be rectified.

CONCLUSION

Review by this Court is necessary to correct the erroneous interpretation of the Fourth Amendment and the application of the exclusionary rule by the Maryland Court of Appeals. Contrary to this Court's previous holdings, the Maryland court focused only on Respondent's subjective expectation of privacy, instead of viewing whether the action of the police officers was reasonable under the circumstances as they appeared at the time of the search. Moreover, the Maryland court held that, regardless of appearances, probable cause for police actions will not be enough; instead, the police officers must be held to a standard of actual knowledge and absolute certainty. This Court has held in Hill v. California, supra, that a police officer can arrest the wrong person under a valid arrest warrant if the officer reasonably believed the person he arrested was the one

who was sought in the warrant. Petitioner maintains that that analogy can be carried to the search situation. If the police have a reasonable, but mistaken, belief that they are searching an area authorized under the warrant, as they did here, that search must also be upheld.

For the foregoing reasons, Petitioner requests this Court to issue a Writ of Certiorari to the Court of Appeals of Maryland.

Respectfully submitted,

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APPENDIX

REPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

NO. 818

September Term, 1983

HAROLD GARRISON

v.

STATE OF MARYLAND

Wilner,
Bloom,
Getty,

JJ.

Opinion by Getty, J.

Filed: April 10, 1984

Harold Garrison proceeded to trial on a statement of facts following the denial of a motion to suppress evidence. On March 18, 1983, in the Circuit Court for Baltimore City (Thomas, J.), Garrison was found guilty of possession with intent to distribute heroin and was sentenced to a fifteen year term of confinement. On appeal, appellant raises two issues:

1. Whether the warrantless search of 2036 Park Avenue, Apartment 3F, and the seizure of items therein was legal where the police knew or should have known that appellant's apartment was separate and apart from apartment 3R, for which a search and seizure warrant had been issued?

2. Whether the plain view doctrine legitimized the search of appellant's apartment?

On May 21, 1982, members of the Baltimore City Police Department executed a search warrant for the third floor apartment located at 2036 Park Avenue in Baltimore City. Lawrence McWebb was named in the warrant as the occupant of the premises. The warrant described 2036 Park Avenue as a three story brick dwelling.

The affidavit accompanying the application for a search and seizure warrant recited that McWebb was known as "Red Cross;" that a reliable informant, instrumental in successful prosecutions in eight search and seizure cases, had purchased marijuana from "Red Cross" at his third floor apartment within the previous twenty-four hours; that the affiant, Officer Marcus, checked with the Baltimore Gas & Electric Company and determined the premises at 2036 Park Avenue, third floor, were in the name of Lawrence McWebb; and that records of the Baltimore City Police Department confirmed that McWebb resided at that address.

The warrant authorized the search of McWebb and of the premises "known as 2036 Park Avenue third floor apartment." The property authorized to be seized included "Marijuana, related paraphernalia, monies, books, papers and photographs pertaining to the illegal distribution of marijuana."

The testimony of three police officers involved in the search must be recounted for a full

understanding of what took place on May 21 at the premises.

The infallibility of hindsight establishes that the police searched the right (McWebb's) and the wrong (Garrison's) premises. The difficulty arises in determining whether the warrantless Garrison search is sustainable despite the acknowledged mistake. We turn now to the testimony of Officers Russell Shea, Albert Marcus and Joseph Schanken.

Detective Shea testified that the front door to the premises was locked when the six officers arrived. He observed seven mail box slots with names, but none with the name "McWebb." A forced entry was unnecesary because McWebb drove up to the house and another officer advised him of the warrant. McWebb then unlocked the front door and the six officers present entered into the first floor hallway.

Without stopping, the entire group proceeded up the stairs to the third floor. The locked door at the top of the stairs was opened by McWebb, permitting the police to enter into a foyer with rooms to the left and to the right. According to Shea, immediately upon

entering the third floor he observed a man (Garrison), in a body cast and a pajama top, standing to the right side of the foyer. Shea testified that he did not observe any closed doors to his right or to his left. He did notice, from a distance of five feet, loose marijuana on a newspaper located on a dresser inside a doorway behind where Garrison was standing. The officers split up to conduct the search. Shea went to his left and began searching what was later established to be McWebb's bedroom. He recovered a revolver, marijuana, and two electric bills, one addressed to McWebb and the other to Garrison. He did not notice at the time, according to his account, that one of the utility bills was marked "3F" and the other "3R."

Shea then proceeded across the open foyer through an open doorway to a bedroom on the right side of the third floor entrance. He observed clothing hanging on the door which was opened back to the interior wall and, upon examination, found in the pockets of a jacket, syringes, a cap used for cooking heroin and five bundles of currency totaling $4,940.00. Shea then noticed that the door had a dead

bolt lock. Sergeant Schanken, who was also present, observed that the door to the left of the hallway had a similar lock. Schanken then ordered the search stopped, because it appeared that two apartments were involved. Shea maintained that all of the interior doors on the third floor were open when the police entered and that none of the doors had numbers identifying separate apartments.

Officer Marcus, based upon information supplied by an informant, prepared the warrant. The Baltimore Gas & Electric Company, Marcus stated, advised him that the third floor tenant was Lawrence McWebb. McWebb was accosted by Marcus outside of the building and ordered to unlock the front door and the door located at the top of the stairs on the third floor. Upon entering the third floor, Marcus observed a quantity of marijuana on a dresser in a room to his right and immediately proceeded into that area to seize the contraband. He, like Shea, placed Garrison in the foyer. Marcus recovered narcotics from several dressers in Garrison's room before he was advised by Sergeant Schanken to discontinue the search. In

preparing the inventory, Marcus did not separate the property taken on a room by room basis.

Detective Schanken was the officer in charge during the search. He saw Garrison when the officers entered and directed him to go into the (McWebb) living room. Neither Garrison nor McWebb, according to Schanken, stated that the third floor contained separate apartments. In walking through the rooms while the search was in progress, Schanken saw two kitchens and two bathrooms and then halted the search.

Appellant Garrison testified that he was not in the hallway as testified to by the police, but remained in his apartment doorway with a police officer present. When the search of McWebb's apartment was completed, Garrison testified, he was taken to McWebb's living room while this apartment was searched. He had lived in the apartment since 1979 and McWebb moved in across the hall in 1981. Garrison asked one of the officers present, "What's going on man?" The only response he received was that another officer was directed to "watch me."

Contrary to the testimony of the three police officers, Garrison insists that the apartments are designated "3F" and "3R" by lettering on the door jambs inside the third floor foyer. [1] Garrison also contended that it was physically impossible to enter the foyer and see into his bedroom, because the door opening into the foyer opened to the right obscuring any view into the bedroom until the common door was closed.

McWebb's testimony corroborated Garrison's account of the entire episode. He added that he told Marcus that he lived in the "third floor rear" apartment. Based upon the conficting testimony the trial court made the following findings of fact:

> THE COURT:
>
> Yes. Now, the Defendant McWebb contends again that it was a general warrant. Now, Defendant argued that argument. That is the police knew or should have known that the Garrison apartment was separate and distinct from the apartment of Defendant McWebb. He further characterizes the testimony of police as perjured or unworthy of belief.

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[1] Photographs taken after the incident support this contention.

Now, the Court, based on what it finds to be critical evidence, makes the following findings of facts: One, that on May 21st, 1982, the police executed a search and seizure warrant for premises at 2036 Park Avenue, third floor apartment. Two, the police had reliable information to believe the Defendant McWebb resided in a third floor apartment, did not know of another apartment on the third floor. Now, while it was evidence that there were a number of apartments in the building, police were unaware where these apartments were located or the character of the building.

Three, the Defendant McWebb was detained outside of 2036 Park Avenue. With the keys furnished by him, the police gained entrance through a locked front door to the building, next to the door were seven mail boxes with bells, or indicated were bells under each mail box, but no names were reflected on any of the mail boxes. Further, McWebb's name was not visible on any of the mail boxes or any area adjacent thereto.

Next, the police were directed to the third floor by McWebb without any notice or knowledge of the layout of that area. Five, that entrance to the third floor was gained through a common marked door which gave no indication that there was more than one apartment located on said floor. There was no one to alert anyone to indicate that there were more than one apartment.

Next, that upon opening said door, police found the Defendant Garrison standing in his night clothes. Next, seven, upon entrance to the third floor, police saw an open door to the left later identified as McWebb's apartment, and also an open door to the right later identified as Garrison's apartment. In fact, no door was visible at the time the police entered and the police were unaware at that time that there were two apartments.

Eight, that from the position of the hallway area leading to the two apartments, the police saw and based on their expertise located on top of the dresser in an open room to the right, a quantity of marijuana. Entrance was made into that room later identified as the apartment of the Defendant Garrison where a police or the police found that over the front door or the door leading to that area articles of men's clothing.

No numbers were observed by police upon entering the apartment which would alert them to a separate apartment. The room was searched, and in the apartment of the Defendant Garrison was recovered a quantity of heroin and approximately four thousand dollars in cash.

Nine, also significant or significantly at the time, neither defendant Garrison nor Defendant McWebb indicated that there were two separate apartments on the third floor. Ten, that a copy of the search and seizure warrant was given to the

Defendant McWebb. The inventory listed all the evidence seized from both apartments without indicating which pieces of evidence were found in each location. Eleven, it is clear that there was a common door which could be opened at the time of the search affording access between the two apartments.

The evidence indicates that while each apartment or the occupant of each apartment could have privacy by locking this door, nevertheless, there was free access judging from all the evidence at the time the police arrived there between the two apartments, and that the Defendants so intended based on the evidence that has been submitted before me.

Now, first with respect to the inventory, the inventory related duties which must be carried out upon execution of a warrant under Maryland Rule 780 are considered ministerial. And assuming the search was valid and the entry was lawful, a failure to comply completely with such ministerial duties does not render the warrant defective. In this case it is clear what was taken as regarded to the inventory and the potential property rights of each of the parties who may be affected or protected.

Now, with respect to the search and seizure warrant. The general rule regarding the searches of multiple units for the purpose of satisfying the Fourth Amendment, searching two or more apartments in the same building, is no different

> than searching two or more completely separate houses. Probable cause must be shown for searching each house, or as the case may be, each apartment. However, there is an exception to this general rule where the multiple unit character of the premises is not externally apparent and is not known to the officer applying for or executing the warrant.
>
> It is clear that the warrant specified the premises to be searched as the third floor apartment of the Defendant McWebb, that the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until after the search had been made and the items were searched. In view of these findings, the Court will deny the motion of each Defendant to suppress the evidence. All right.

As a reviewing court, we are obliged to accord due deference to the trial judge who, having seen and heard the witnesses, has a superior opportunity to determine the credibility of the witnesses, and to resolve contradictions in first line facts. Watson v. State, 35 Md. App. 381 (1977); Fidazzo v. State, 32 Md. App. 590 (1976); Maryland Rule 1086. It is clear from the trial judge's factual summary that he believed the police version of what took place and rejected the

contradictory testimony of McWebb and Garrison. Under Watson, supra, he was authorized to make that judgment.

The balance sheet on what the police knew, or by the exercise of reasonable diligence should have known, required careful consideration of the following factors:

1. The police knew an apartment building was involved; they saw seven mail boxes at the entrance to a three story building.

2. They reasonably concluded that McWebb occupied the entire third floor; Baltimore Gas & Electric stated that 2036 Park Avenue had service listed to McWebb, police records established that he lived at that address on the third floor.

3. No attempt was made to determine Garrison's status when he was first observed in the foyer; Garrison didn't say he had a separate apartment, but the police didn't make any inquiry concerning him.

4. The police answered Garrison's phone and the caller asked for "Red Cross," McWebb's street name.

5. Utility bills recovered in McWebb's apartment were addressed to McWebb and to Garrison, designated as "3F" and "3R"; the police didn't notice the distinction at the time.

6. McWebb made no mention of Garrison or his separate quarters. The trial judge did not believe that McWebb said he lived in "the rear."

7. All of the doors, left and right, inside the foyer were open; the court so found in assessing credibility.

8. The immediate examination of the premises for safety purposes disclosed that no one else was present; with McWebb and Garrison in custody, no exigency existed that precluded an orderly, systematic evaluation of the circumstances incident to the execution of the warrant.

Under these circumstances, is the search of Garrison's apartment sustainable?

Ordinarily, probable cause will not justify a warrantless entry into fixed premises. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971); Steele v. United States, 267 U.S. 498, 45 S.Ct. 414, 69 L.Ed. 757 (1925); Brown v. State, 15 Md. App. 584 (1972); Gilbert and Moylan, Maryland Criminal Law: Practice and Procedure, "The Plain View Doctrine," Ch. 34, Sec. 34.11. "Police agents, standing where they have a right to be, observing contraband in 'plain view' within fixed premises are not thereby justified in making an immediate entry and seizure; a

warrant is still necessary." Coolidge, supra, at 468. In the present case, the police were lawfully within the third floor premises, at least to the extent of the foyer. The warrantless search of Garrison's apartment, however, may not be sustained unless the facts accepted by the court fall within some recognized exception to the warrant requirement.

Search warrants directed against multiple occupancy structures are generally held to be invalid where the warrant fails to describe the subunit with that degree of particularity that precludes the search of other units within the building. Exceptions to the general rule include common occupancy, entire premises as suspect, and multi-unit character of premises not known or apparent. Minovitz v. United States, 298 F.2d 682 (D.C. 1962); 11 A.L.R.3d 1330. In this case we are concerned with the third exception; to wit, what the police knew or should have known.

In Thomas v. State, 50 Md. App. 286 (1981), we upheld the sufficiency of a warrant against an allegation that where an eleven story complex was involved and appellant's name was not included, the

warrant was too general. A charge that a warrant is not specific is the equivalent of stating that by due diligence the police knew, or should have known, that separate units were located at the premises to be searched.

We said that Maryland law required no greater specificity than that the warrant shall name or describe with reasonable particularity the building, apartment, premises or place to be searched. The police in Thomas did not conduct an indiscriminate search, but located the proper apartment and conducted the search. Accord, Butler v. State, 19 Md. App. 601 (1974), appellant rented room in a multi-unit building which he used as a "stash house." See also, United States v. Santore, 290 F.2d 51 (2d Cir. 1960), cert. denied, 365 U.S. 834, 81 S.Ct. 745, 5 L.Ed.2d 743 (1961).

We emphasized in Harris and Schmitt v. State, 17 Md. App. 484 (1973), that there is no formula for measuring particularity in describing premises subject to search; the adequacy depends on the facts and circumstances of each case. The State cites two

decisions of this Court that allegedly support, in principle, the legality of the search of Garrison's premises. [2] In Delly, the police were unaware that the house was a multi-family dwelling. Nothing was taken from the unoccupied apartments; the only evidence introduced came from appellant's quarters. Due to the outward appearance of the house, the police had no indication that more than one family unit occupied the premises. The Court, therefore, upheld the validity of the warrant, despite the fact that the officers searched premises other than appellant's.

The search warrant in Green was for the defendant and her apartment. The affidavit mistakenly referred to the apartment as being on the second floor. After discovering the error, the police entered the first floor apartment occupied by the defendant and carried out the search. The warrant was upheld. Unlike either Delly or Green, however, the search and seizure herein included both apartments. The facts found by the court in the

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2 Delly v. State, 30 Md. App. 391 (1976); Green v. State, 38 Md. App. 63 (1977).

present case, however, are sufficient to establish that the police had no reason to believe that the third floor contained more than one apartment. One locked door without any identifying numbers provided entry to the third floor. Several open doors immediately within revealed a living room to the left and a bedroom to the right. Baltimore Gas & Electric verification indicated one apartment. Appellant's assertion that seven mail boxes in a three story building is notice that more than one apartment is located on the third floor is pure speculation. Any combination of units is possible. One may require the police to be observant and to act reasonably; clairvoyance, however, is not required.

Several cases from other jurisdictions are instructive on the issue of the multiunit premises not apparent. In People v. Kinnebrew, 259 N.W.2d 662 (Mich. App. 1977), the Michigan Constitution, like Maryland's, [3] provided that warrants shall not issue

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[3] Md. Constitution, Art.26: That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming (Cont'd.)

without "particularity describing the place to be searched." The police informant purchased drugs in the upstairs apartment from an individual who had not been apprehended. The police were under the impression that the building was a single family unit. In executing the warrant the police discovered the defendant and the evidence in the downstairs apartment. The affidavit submitted in support of the request for the warrant made no mention of any downstairs activity. Acknowledging that the warrant was not sufficiently specific, the Michigan Court said:

> "In cases where the police were understandably misled that a house was a single dwelling unit, the courts have recognized an exception to the rule that evidence must be suppressed if the search warrant did not adequately describe the premises to be searched. The crucial inquiry in this type of case is whether the police made a good faith effort to accurately describe the premises." [4]

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or describing the place or the person in special, are illegal, and ought not to be granted.

[4] The Court cited cases collected in §8 of the annotation in 11 A.L.R.3d 1330 as expressing the majority view that: "Absent a finding by the trial court that the police officers knew or should have known when they obtained the search warrant that the building (Cont'd.)

The exception to the general rule was recognized in People of the State of Colorado v. McGill and Reiter, 528 Pac.2d 386 (1974), stating:

> "The fact that the police learned that the house was being used for multiple occupancy purposes after they gained entrance to the premises does not alter our conclusion (of constitutionality). When the police executed the warrant and discovered that the building was not a single family residence, they did not have to abandon their search and obtain a new warrant. The police procedure, in this case, was reasonable in view of the exigent circumstances. Had they elected to delay their search to obtain an amended warrant, they would have jeopardized the search and the loss of evidence of narcotics which are easily destroyed."

Search warrants need not be read with all the precision of a pedantic grammarian. We hold that the facts relied upon by the trial judge were sufficient to support his conclusion that the police could not reasonably have determined, prior to their entry, that the third floor at 2036 Park Avenue contained more

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involved was multi-unit in character, the warrant and resultant search and seizure have been held to be constitutionally permissible." People v. Johnson, 267 N.Y.S.2d 301 (1966).

than one apartment. The warrant, therefore, was not constitutionally defective.

Appellant's second contention is that "plain view," conceding the legality of the entry, will not justify the search of and seizure from Garrison's apartment. Appellant relies on our decision in Brown v. State, 15 Md. App. 584 (1972), which is a scholarly and comprehensive history of the doctrine articulated by Judge Moylan. The bottom line in Brown is "with respect to fixed premises, no amount of probable cause will justify an intrusion." Brown was arrested for theft, he declined a request by the officers present to search his residence. The police then proceeded to the home of Brown's landlady for the purpose of obtaining a description of the premises in order to obtain a search warrant. The landlady invited the officers into her home, and, pointing to an open door, said, "There's the room where Willie lives." From the hallway, a deputy sheriff saw a box in which he could see "in plain view" the stolen property. Without walking into the room, he reached in and seized the box and contents.

We said that there was no prior valid intrusion into Brown's room and, therefore, Brown's Fourth Amendment rights were violated. The police were on the outside looking in and, while they had a right to look, they had no corresponding right to enter and/or seize. We turn now to a consideration of Brown in light of the Supreme Court decision in Washington v. Chrisman, 455 U.S. 1, 102 S.Ct. 812, 70 L.Ed.2d 778 (1982).

A university police officer stopped a student, Chrisman, who appeared to be underage and who was carrying a bottle of gin. When he was asked for identification, Chrisman said he could get the information from his room. The officer accompanied him and while standing in the doorway he observed a pipe and what he believe to be marijuana seeds on a desk in the room. The officer entered the room, confirmed that the seeds were marijuana and that the pipe smelled of marijuana. Chrisman and his roommate were advised of their rights, which they waived, and the roommate, when asked if other drugs were in the room, produced additional marijuana and

cash. The students consented to a search of their room which yielded a quantity of lysergic acid diethylamide (LSD). The roommate was convicted of possession of controlled dangerous substances following a denial of a suppression motion.

A divided Court held:

1. It is not unreasonable for a police officer, under the Fourth Amendment, as a matter of routine, to monitor the movements of an arrested person as his judgment dictates following an arrest;

2. Such surveillance is not an impermissible invasion of the privacy or personal liberty of an individual who has been arrested, and accordingly the officer could, consistent with the Fourth Amendment, accompany the student to his dormitory room and enter the room upon observing suspected contraband in plain view, such entry from a public corridor not requiring a showing of exigent circumstances; and

3. The Fourth Amendment did not prohibit the seizure of the contraband which was in plain view, it being of no legal significance whether the officer was in the room, on the threshold, or in the hallway at the time he observed the contraband, since he had a right to be in any of these places as an incident of a valid arrest.

In dissenting, Justice White (joined by Justice Brennan and Justice Marshall) said the officer could only enter the residence of the arrested person to protect himself or to maintain control over the arrestee, and where the officer entered solely to confirm his suspicion relating to contraband therein, the Fourth Amendment rights of the arrestees were violated.

At first blush, the Court's opinion (Burger, C.J.) would seem to overrule Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971), holding that plain view alone is never enough to justify the warrantless seizure of evidence. A more careful reading of the opinion, however, leads us to conclude that the sighting of the marijuana in plain view did not form the basis for the Court's conclusion that the seizure was justified. Rather, the Court construed the seizure to be proper for the reason that the officer had a right to be in the room with the arrestee and it was, therefore, not relevant that his observation was made from the doorway. The initial intrusion being valid, the later "plain view" seizure and consent search did not violate the arrestee's Fourth Amendment rights.

We decide, therefore, that neither Coolidge nor Brown are overruled by Chrisman.[5]

We recognize that the resolution of the present case cannot rest upon the fact that Garrison was unquestionably engaged in drug trafficking. Neither may we sanction a warrantless search of premises in violation of the Fourth Amendment. The trial court decided that "there was free access between the two apartments. . . and that the defendants so intended." The evidence to support that conclusion is that after gaining entrance to the third floor all the doors were open, Garrison was standing in the foyer, marijuana was visible in the room behind him, a phone call received in one of Garrison's rooms was intended for McWebb, no separate apartment numbers were visible, Garrison's utility bill was in McWebb's quarters, and no one present advised the police that the apartments were separate. Garrison was immediately placed in custody and taken to a room with McWebb. The

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5 Neither the Supreme Court of the State of Washington nor the Supreme Court of the United States engaged in a discussion of "exigent circumstances" in deciding Chrisman.

seizure of the marijuana at that point was incident to a lawful arrest.

This case does not present the usual common use involving separate bedrooms and a single kitchen and bath (People v. Gorg, 157 Cal. App.2d 515, 321 P.2d 143 (1958)); or two family occupancy where defendant is head of household (Sparks v. State, 142 P.2d 379 (Okla. 1943)). The court in the present case, we decide, could reasonably conclude that both persons seemed to be making themselves at home throughout the third floor. We are not unmindful of the fact that appellant accused the police of lying and distorting what appellant alleges to be the true facts. Credibility of the witnesses, however, is within the province of the trial court and not an appellant tribunal.

Upon the peculiar facts of this case, we hold that the trial court was not clearly erroneous in concluding:

1. That the police could not reasonably have discovered, prior to the time that the search was conducted and the contraband was observed and seized, that the third floor contained two separate apartments; and

2. That despite the designation of the third floor premises as "3F" and "3R," McWebb and Garrison treated the third floor as one apartment in common use.

The resulting search and seizure of the entire premises, therefore, do not violate appellant's Fourth Amendment rights. This decision does no violence to Brown, supra, which we recognize is still good law in Maryland.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.

IN THE COURT OF APPEALS OF MARYLAND

No. 94

SEPTEMBER TERM, 1984

HAROLD GARRISON

v.

STATE OF MARYLAND

Murphy, C.J.
Smith
Eldridge
Cole
Rodowski
Couch
Morton, James C., Jr.
(retired, specially assigned)

JJ.

Opinion by Morton, J.

Filed: June 27, 1985

This case presents the question whether a search warrant particularly describing one apartment authorizes a search of an adjacent apartment and a seizure of goods therein, when police executing the warrant mistakenly believed that the search which they conducted was of the premises covered by the warrant.

On May 21, 1982, Detective Albert Marcus of the Baltimore City Police Department applied for a warrant to search the dwelling of Lawrence Meril McWebb. Detective Marcus alleged in an affidavit in support of a search warrant that he had met with a "proven Confidential Reliable Informant" who told him that McWebb was selling marijuana out of his third floor apartment at 2036 Park Avenue, in Baltimore City. Marcus alleged that he took the following actions to verify McWebb's address:

> "Upon receiving the above information from the proven confidential reliable informant your Affiant Detective Marcus went to the premises known as 2036 Park Avenue and found it exactly as the Informant had described as a three story brick dwelling with the numerials [sic]

> 2-0-3-6 affixed to the front of the premises. Further your Affiant made a check with the Baltimore Gas and Electric Company and discovered that the premises of 2036 Park Avenue third floor was in the name of Lawrence McWebb. Your Affiant Marcus then checked with the Baltimore Police Department and discovered that there was a subject by the name of Lawrence Merial [sic] McWebb, black male date of birth 12/20/31 with an address of 2036 Park Avenue third floor who had been arrested in the past with a B. of I. number of 108-147. According to arrest records the subject McWebb is described as being a black male 5'11" tall weighing 150 pounds. This was exactly as described by Informant."

When Marcus applied for the search warrant, he apparently believed that only one apartment occupied the entire third floor. The search warrant which was issued authorized the police to search for marijuana and related materials "on the person" and "on the premises" of "Lawrence Meril McWebb," at "2036 Park Avenue third floor apartment described as being a three story brick dwelling with the numerals 2-0-3-6 affixed to the front of same." Pursuant to the warrant, several Baltimore City police officers, including Marcus, Detective Russell Shea, and Sergeant Joseph Schanken searched the entire third

floor of 2036 Park Avenue. [1] As a result of the search, the officers seized evidence from two separate apartments on the third floor, McWebb's and Harold Garrison's, the defendant in this case.

Garrison was subsequently charged with violations of the Controlled Dangerous Substance Act, including Maryland Code (1957, 1982 Repl. Vol., 1984 Cum. Supp.), Art. 27, §286, possession of heroin with intent to distribute. Garrison moved to suppress the evidence seized from his apartment, arguing at a hearing on the motion "that the officers, not having a warrant for [his] apartment, had no right to go into that apartment and, furthermore, that they knew or should have known that . . . the apartment . . . was a separate apartment." Schanken, Shea and Marcus offered testimony regarding the manner in which the search was carried out. Garrison and McWebb offered testimony that substantially conflicted with the police account. Judge Thomas, presiding in the Circuit Court

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[1] A diagram of the third floor is set out in the appendix.

for Baltimore City, made the following findings of fact and denied the motion:

> "One, that on May 21st, 1982, the police executed a search and seizure warrant for premises 2036 Park Avenue, third floor apartment. Two, the police had reliable information to believe the Defendant McWebb resided in a third floor apartment, did not know of another apartment on the third floor. Now, while [there] was evidence that there were a number of apartments in the building, police were unaware where these apartments were located or the character of the building.
>
> "Three, the Defendant McWebb was detained outside of 2036 Park Avenue. With the keys furnished by him, the police gained entrance through a locked front door to the building, next to the door were seven mail boxes with bells, or indicating were bells under each mailbox, but no names were reflected on any of the mail boxes. Further, McWebb's name was not visible on any of the mail boxes or any area adjacent thereto.
>
> "Next, the police were directed to the third floor by McWebb without any notice or knowledge of the layout of that area. Five, that entrance to the third floor was gained through a common marked door which gave no indication that there was more than one apartment located on said floor. There was no one to alert anyone to indicate that there were more than one apartment.

"Next, that upon opening said door, police found the Defendant Garrison standing there in his night clothes. Next, seven, upon entrance to the third floor, police saw an open door to the left later identified as McWebb's apartment, and also an open door to the right later identified as Garrison's apartment. In fact, no door was visible at the time the police entered and the police were unaware at that time that there were two apartments.

"Eight, that from that position of the hallway area leading to the two apartments, the police saw and based on their expertise located on top of the dresser in an open room to the right, a quantity of marijuana. Entrance was made into that room later identified as the apartment of the Defendant Garrison where a police or the police found over the front door or the door leading to that area articles of men's clothing.

"No numbers were observed by police upon entering the apartment which would alert them to a separate apartment.[2] The room was searched, and in the apartment of the Defendant Garrison was recovered a quantity of heroin and approximately four thousand dollars in cash.

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[2] At the suppression hearing, Garrison offered photographs of the entrances to both apartments into evidence. The pictures showed "3R" beside McWebb's apartment door and "3F" beside Garrison's.

"Nine, also significant or significantly at the time, neither Defendant Garrison nor Defendant McWebb indicated that there were two separate apartments on the third floor. Ten, that a copy of the search and seizure warrant was given to the Defendant McWebb. The inventory listed all the evidence seized from both apartments without indicating which pieces of evidence were found in each location. Eleven, it is clear that there was a common door which could be opened at the time of the search affording access between the two apartments.

"The evidence indicates that while each apartment or the occupant of each apartment could have privacy by locking this door, nevertheless, there was free access judging from all the evidence at the time the police arrived there betwen the two apartments, and that the Defendants so intended based on tne evidence that has been submitted before me.

* * *

"Now, with respect to the search and seizure warrant. The general rule regarding the searches of multiple units for the purpose of satisfying the Fourth Amendment, searching two or more apartments in the same building, is no different than searching two or more completely separate houses. Probable cause must be shown for searching each house, or as the case may be, each apartment. However, there is an exception to this general rule where the multiple unit character of the

> premises is not externally apparent and is not known to the officer applying for or executing the warrant.
>
> "It is clear that the warrant specified the premises to be searched as the third floor apartment of the Defendant McWebb, that the officers did not know that there was more than one apartment on the third floor and nothing alerted them of such a fact until after the search had been made and the items were searched [sic]. In view of these findings, the Court will deny the motion of each Defendant to suppress the evidence." (Emphasis added).

Thus, despite its denial of the defense motions, the trial court determined that the warrant, on its face, was limited to McWebb's apartment.

Garrison proceeded to trial on a statement of facts with a plea of not guilty. On March 18, 1983, he was found guilty on the heroin charge and sentenced to a 15-year term of imprisonment.

Garrison appealed to the Court of Special Appeals, which affirmed the judgment of the trial court. Garrison v. State, 58 Md. App. 417, 473 A.2d 514 (1984). Garrison then filed a petition for a writ of certiorari which this Court granted.

The question presented here is readily resolved by an examination of elementary search and seizure and the uncontested facts of this case. Article 26 of the Maryland Declaration of Rights provides:

> "That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grevious [grievous] and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted."

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Article 26 is in pari materia with the Fourth Amendment. Potts v. State, 300 Md. 567, 576, 479 A.2d 135 (1985), and cases there cited.

As the Supreme Court has noted, except in special situations, "the entry into a home to conduct a

search or make an arrest is unreasonable under the Fourth Amendment unless done pursuant to a warrant." Steagald v. United States, 451 U.S. 204, 211, 101 S.Ct. 1642, 68 L.Ed.2d 38 (1981) (emphasis added). As the Court stated in Coolidge v. New Hampshire, 403 U.S. 443, 454-455, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971),

> "the most basic constitutional rule in this area is that 'searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment - subject only to a few specifically established and well-delineated exceptions.' The exceptions are 'jealously and carefully drawn,' and there must be 'a showing by those who seek exemption . . . that the exigencies of the situation made that course imperative.'"

See State v. Wilson, 279 Md. 189, 194, 367 A.2d 1223 (1977).

The Supreme Court commented in Walter v. United States, 447 U.S. 649, 656, 100 S.Ct. 2395, 65 L.Ed.2d 410 (1980), that

> "[w]hen an official search is properly authorized - whether by consent or by the issuance of a valid warrant - the scope of the search is limited by the terms of its authorization. Consent to search a garage would not implicitly authorize a search of an

> adjoining house; a warrant to search for a stolen refrigerator would not authorize the opening of desk drawers."

Maryland has also recognized that the scope of a search is limited by the terms of the warrant. See Wilson v. State, supra, 279 Md. at 194; Smith v. State, 33 Md. App. 407, 409, 365 A.2d 53 (1976).

With these principles in mind, we turn to those facts in this case which are uncontested. The State concedes, and the trial judge found, that the third floor of 2036 Park Avenue contained two separate and distinct apartments. The trial judge further found that the search warrant covered only the premises belonging to McWebb. It is undisputed that the police were authorized to search only one apartment, McWebb's; the warrant did not authorize the search of Garrison's apartment. There is no question as to the validity of the search warrant itself. No argument was made in this Court that any of the exceptions to the warrant requirement applied here. It is clear, therefore, that the police had no authority to cross the threshold of Garrison's apartment and seize evidence.

The same situation was addressed by the court in Keiningham v. United States, 287 F.2d 126 (2d Cir. 1960). In Keininghamn, police secured arrest warrants for several suspects and a search warrant for 1106 Eighteenth Street, N.W. The police entered this address through an open door but discovered none of the suspects in the house. The police lieutenant in charge of the search observed a "freshly cut" door between 1106 and 1108 Eighteenth Street. The lieutenant pushed on the door, which opened. The door led to the second floor rear porch of 1108 Eighteenth Street. The police saw the suspects inside 1108 Eighteenth Street and announced that they had arrest warrants. When the suspects began to run, the police forced open the door, arrested the suspects and seized various gambling materials. In reversing the convictions, the court explained (287 F.2d at 129):

> "The Government contends that, since appellants were using the two houses as a single unit, the search warrant for 1106 should somehow be construed to embrace 1108 as well. It seems to be the Government's theory that 1108 became part of 1106 because of the use to which the two houses were put by appellants. This contention is

> unsound. We know of no clause in the warrant issued extending the authority granted therein in the event of unforeseen circumstances, and it is well settled that search warrants must be strictly construed. The authority to search is limited to the place described in the warrant and does not include additional or different places."

See Flowers v. State, 88 Okla. Crim. 252, 202 P.2d 233 (1949) (warrant authorizing search of specific room in hotel cannot be used to search another separately occupied room). We have the same situation here. Police had a warrant to search McWebb's apartment. They had no warrant to search Garrison's. They had no justification for entering his premises, regardless of appearances.

At trial and on appeal, the State, citing cases in Maryland and other jurisdictions, artued that a "good faith" exception applies to the facts here. The cases cited by the State are simply inapposite. The State relied primarily on a principle adopted in United States v. Santore, 290 F.2d 51 (2d Cir. 1960), cert. denied, 365 U.S. 834, 81 S.Ct. 749, 5 L.Ed.2d 744 (1961). The State framed the rule discussed in that case as follows:

> "if the building in question from its outward appearance would be taken to be a single-occupancy structure and neither the affiant not other investigating officers nor the executing officers knew or had reason to know of the structure's actual multiple-occupancy character until execution of the warrant was under way, then the warrant is not defective for failure to specify a subunit within the main building. (brief at 16)."

The State recognizes, however, that the Santore situation is not what is presented here. In Santore, the warrant covered the premises searched; here, the warrant covered only McWebb's apartment. In its brief, the State comments: "Appellee realizes [that the cases cited] are not on all fours with the facts in this case as the police did search the 'right' apartment of McWebb and the 'wrong' apartment of [Garrison] . . . ." (Brief at 18). [3]

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[3] The Court of Special Appeals also recognized this fact: "The infallibility of hindsight establishes that the police searched the right (McWebb's) and the wrong (Garrison's) premises." Garrison v. State, 58 Md. App. 417, 420, 473 A.2d 514 (1984).

The other cases relied on also involve situations in which the warrant covered the premises searched. In all the cited Maryland cases the premises searched were precisely the ones described in the warrant. See e.g., Thomas v. State, 50 Md. App. 286, 437 A.2d 678 (1981), cert. denied, 292 Md. 639 (1982); Delly v. State, 30 Md. App. 391, 352 A.2d 331, cert. denied, 278 Md. 720, cert. denied, 429 U.S. 833, 97 S.Ct. 96, 50 L.Ed.2d 97 (1976); Butler v. State, 19 Md. App. 601, 313 A.2d 554, cert. denied, 271 Md. 732 (1974). Similarly, in State v. Hymer, 400 So.2d 637 (La. 1981); State v. Ventry, 439 So.2d 1144 (La. App. 1983); People v. Kinnebrew, 75 Mich. App. 81, 254 N.W.2d 662 (1977); State v. Schumann, 156 N.J. Super. 563, 384 A.2d 201 (1978); State v. Hendricks, 145 N.J. Super. 27, 336 A.2d 999 (1976); and State v. Woodard, 35 N.C. App. 605, 242 S.E.2d 201 (1978), the courts determined that the search conducted was within the scope of the warrants, each of which authorized a search of an area larger than the premises occupied by the defendants. The State here attempts to turn this allowance of an imprecise description of premises into a "good faith

exception" to the warrant requirement. The analogy simply does not work. The warrant in the instant case precisely and unambiguously described the premises to be searched: McWebb's apartment. The police then expanded the search to a second apartment not described or mentioned in the warrant.

Garrison's motion to suppress the evidence should have been granted.

JUDGMENT OF THE COURT OF SPECIAL APPEALS REVERSED, AND THE CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REVERSE THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AND REMAND THE CASE FOR A NEW TRIAL.

COSTS TO BE PAID BY BALTIMORE CITY.

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Mellish

POLICE DEPARTMENT
BALTIMORE, MARYLAND

2036 Ayer Ave 3rd Floor

State's Motion Exhibit #3
(Diagram of 3rd Floor)

JT EXT. 29

HAROLD GARRISON	*	IN THE
	*	COURT OF APPEALS
v.	*	OF MARYLAND
	*	No. 94
STATE OF MARYLAND	*	September Term, 1984

* * * * * *

MANDATE

TO THE HONORABLE THE JUDGES OF THE COURT OF SPECIAL APPEALS OF MARYLAND:

WHEREAS the case of Harold Garrison v. State of Maryland came before you and wherein the judgment of the said Court of Special Appeals was duly entered on the tenth day of April, 1984 as appears from the transcript of the record of the said Court of Special Appeals which was brought into the Court of Appeals of Maryland by virtue of a writ of certiorari dated September 11, 1984; and

WHEREAS in the September Term, 1984 the said cause came on to be heard before the Court of Appeals of Maryland;

ON CONSIDERATION WHEREOF, it was ordered and adjudged on June 27, 1985 by this Court that the judgment of the Court of Special Appeals be reversed, and case remanded to that Court with instructions to reverse the judgment of the Circuit Court for Baltimore City and remand the case for a new trial. Costs to be paid by Baltimore City.

NOW, THEREFORE, THIS CAUSE IS REMANDED to you in order that such proceedings may be had in the cause in conformity with the judgment of this Court as accord with right and justice, and the Constitution and laws of Maryland, the said writ notwithstanding.

WITNESS The Honorable Robert C. Murphy, Chief Judge of the Court of Appeals of Maryland, this third day of September, 1985.

Alexander L. Cummings (s)
Clerk,
Court of Appeals of Maryland

Costs:	Petition filing fee	$ 30.00
	Appellant Brief	273.60
	Joint Record Extract	1017.60
	Appellee Brief	153.60

July 12, 1985: Motion for reconsideration filed by appellee.

Sept. 3, 1985: Motion for reconsideration denied.